APPENDIX

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA NORTHERN DIVISION

Civil Action No. 81-617-N

WILLIAM L. BURTON, PERCY D. BELL, ABRAHAM LINCOLN WOODS, JR., BOBBY JO JOHNSON, ANDREW HAYDEN, FELIX NIXON, EURALEE A. HAYNES, individually and on behalf of all other persons similarly situated,

Plaintiffs

vs.

WALKER HOBBIE, JR., in his official capacity as Judge of Probate of Montgomery County and as a representative of the class of all judges of probate in the State of Alabama; DON SIEGELMAN, in his official capacity as Secretary of State of Alabama,

Defendants

CHARLES A. GRADDICK, Attorney General for the State of Alabama,

Defendant-Intervenor

[Filed Aug. 27, 1982]

Before FRANK M. JOHNSON, JR., Circuit Judge, HOBBS and THOMPSON, District Judges.

TRUMAN M. HOBBS, District Judge

MEMORANDUM OPINION

This cause is now before the Court on defendants' motion, filed herein August 13, 1982, to reconsider the Court's August 10, 1982 order which set a February 1, 1983 deadline for the submission of a legislative plan approved by the Attorney General of the United States.

Also before the Court are plaintiffs' motion, filed August 16, 1982, to stay the Court's order of August 10, refusing to vacate or modify the interim plan; and plaintiffs' motion, filed August 25, 1982, for reconsideration of this Court's orders of June 21 and August 10, adopting an interim plan and setting a February 1, 1983 date for submission of a third approved legislative plan. A hearing was held on the above motions on August 25, 1982. Upon consideration of the motions and the arguments presented, the Court is of the opinion that defendants' motion for reconsideration is due to be granted in part, and plaintiffs' motions for a stay and reconsideration are due to be denied.

In its opinion of June 21, 1982, the Court stated that if the Alabama Legislature failed to obtain Section 5 approval for Act No. 82-629 from the United States Attorney General or the United States District Court for the District of Columbia and failed "at its next session of the Legislature to adopt a redistricting plan which will be approved . . . this Court will formulate a court redistricting plan." The Court went on to state in its accompanying order that in no event would its interim redistricting plan be valid for any election after December 31, 1983. The parties acknowledged at the August 25, 1982 hearing that they understood the Court's June 21 order to require an election for new legislators under a permanent plan no later than the fall of 1983, which would clearly foreclose the Legislature from waiting until its April 1983 regular session to consider a third reapportionment plan. In order to have any hope of meeting the deadline of fall 1983 elections, the Legislature will have to pass a new plan in the fall of 1982 or the winter of 1983.

In their motion defendants argue that there are severe practical and political impediments to the Alabama Legislature passing and obtaining preclearance for a legislative plan on or before February 1, 1983, as required by

the order of this Court. In their August 13, 1982 submission, defendants argued that they would need until June 1, 1983; however, in court defendants asserted that they could comply with a February 15, 1983 deadline for passage of a reapportionment plan and an April 15-30, 1983 deadline for approval from the Attorney General. Although the Court is aware of the problems the Legislature will meet in facing a winter 1983 deadline, the Court is concerned about the amount of time that it will require for this Court to devise a reapportionment plan which meets all the legal requirements. All parties understand that elections for a new legislature under a permanent reapportionment plan should be held no later than the fall of 1983. In order to meet this schedule, the Court concludes that it cannot delay beyond March 1, 1983 to begin devising its own plan.

This Court, accordingly, will extend the deadline for submission of an approved plan from February 1 to March 1, 1983. The Court is not acting to circumscribe the efforts of the Legislature. But in order to devise its own plan, if the Legislature is unsuccessful in getting a valid plan, the Court will require time for extensive study of the relevant materials and documents by a court-appointed expert and by the members of this Court, time for public comment on the plan devised, time for comment and challenges to the plan by the parties, and finally, time to review all comments and incorporate all necessary changes. This is a process which will take more than a few weeks. Defendants have consistently noted that State election officials need approximately three months' lead time to put a plan in place for an election. The Court does not want to find itself in the position it faced in June of 1982 when the time requirements for putting an election plan in place foreclosed careful consideration of submitted plans or the development of a court plan. The Court would remind the defendants that, by their own admission, it took the Alabama Legislature from early April 1981 (when it received the census data)

to October 21, 1981, to devise and pass its first redistricting plan, a period of seven months.

Moreover, even if the Alabama Legislature succeeds in passing and obtaining approval for a new reapportionment plan by March 1, 1983, this Court will still need to hold hearings on any state and federal constitutional objections plaintiffs may raise. These challenges could require the Court to devise its own plan even if the legislative plan was precleared by the Attorney General. For the above reasons, the Court will order that defendants file with this Court by March 1, 1983, an approved legislative redistricting plan or otherwise this Court must proceed to devise its own redistricting plan.

The Court has said several times that it is of the opinion that the elections scheduled for the fall of 1982 should be held as scheduled under the interim plan set out in the Court's June 21, 1982 order. The Court is still of that opinion and will not stay its June 21 and August 10, 1982 orders, adopting and refusing to modify said interim plan. Furthermore, the Court will not delay the elections in order to have the current Legislature act on a new plan this fall nor proceed to hold hearings on the state and federal constitutional issues and devise a court plan prior to March 1, 1983 as requested in plaintiffs' motion for reconsideration. The effect of what plaintiffs are seeking would be to reward the members of the Legislature, who have twice failed in their efforts to devise a plan which would meet Section 5 approval, by allowing them to remain in office for another six months. This Court is unwilling to take such a step which would encourage legislative procrastination. Plaintiffs' motion for a stay and for reconsideration will be denied.

Finally, the Court is of the opinion that whether on March 2, 1983, the Court must begin to devise its own plan or initiate consideration of an approved legislative plan, it will be necessary for the Court to have all census and other data which the parties believe are relevant and

necessary to enable the Court's expert to devise a reapportionment plan. The parties have stated in prior hearings that it could require two weeks or more to gather and file all the necessary data with the Court. Because the Court thinks that further delay beyond March 1, 1983, is unwarranted, the Court will order the parties to file all necessary data on or before March 1, 1983. Moreover, in order that the Court may proceed in choosing its own expert without prejudice to the parties, it will direct the parties to file with the Court a list of all experts they have contacted or intend to contact in connection with this litigation.

An order will be entered in accordance with this memorandum opinion issued this date.

DONE this 27th day of August, 1982.

/s/ Frank M. Johnson, Jr.
United States Circuit Judge

/s/ Truman M. Hobbs
United States District Judge

/s/ Myron H. Thompson
United States District Judge

THOMPSON, District Judge, concurring specially.

I adhere to my opinion, as expressed in my earlier dissents, that the court acted improperly in adopting and in subsequently refusing to amend a legislative reapportionment plan to which the Attorney General had objected pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. Nevertheless, I concur in the denial of both the plaintiffs' motion to stay and motion to reconsider only because I am of the opinion that it is now time to focus on obtaining a valid permanent reapportionment plan for the fall 1983 elections of the Alabama legislature.

DONE, this the 27th day of August, 1982.

/s/ Myron H. Thompson
United States District Judge

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Plaintiffs

vs.

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Defendants

CHARLES A. GRADDICK, Attorney General
for the State of Alabama,
Defendant-Intervenor

[Filed Aug. 27, 1982]

ORDER

In accordance with the memorandum opinion entered this date, it is

ORDERED that defendants' August 13, 1982 motion to reconsider this Court's order of August 10, 1982 be and hereby is granted.

It is further ORDERED that the defendants in this action file with this Court by March 1, 1983, an approved legislative redistricting plan which has met the preclearance requirements of Section 5 of the Voting Rights Act, by means of approval either by the United States Attorney General or by the United States District Court for the District of Columbia; otherwise, the Court will proceed to draw a permanent court-ordered plan for the reapportionment of the Alabama Legislature.

It is further ORDERED that plaintiffs' August 16, 1982 motion to stay this Court's August 10 and June 21,

1982 orders and plaintiffs' August 25, 1982 motion to reconsider this Court's orders be and hereby are denied.

It is further ORDERED that all parties to this litigation file with the Court on or before March 1, 1983, all data which the parties consider the Court's expert will need in order to devise a constitutionally valid reapportionment plan. The parties are also DIRECTED to file with the Court a list of all experts they have contacted or intend to contact in connection with this litigation by September 30, 1982.

DONE this 27th day of August, 1982.

/s/ Frank M. Johnson, Jr.
United States Circuit Judge

/s/ Truman M. Hobbs
United States District Judge

/s/ Myron H. Thompson
United States District Judge